

# Customs Bulletin

Regulations, Rulings, Decisions, and Notices  
concerning Customs and related matters



## and Decisions

of the United States Court of Appeals for  
the Federal Circuit and the United  
States Court of International Trade

Vol. 19

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NOVEMBER 13, 1985

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No. 46

*This issue contains:*

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Notices of Appeal

THE DEPARTMENT OF THE TREASURY  
U.S. Customs Service

### **NOTICE**

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# U.S. Customs Service

## *Treasury Decisions*

19 CFR Part 24

(T.D. 85-168)

### Customs Regulations Amendment Relating to Assessment and Collection of Certification Fees

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations relating to the fee to be charged by Customs for furnishing official certifications. Often referred to as a delivery verification, these certificates are Customs official acknowledgement that certain merchandise was landed in the U.S. from a foreign country and provides information to the requesting party, usually the shipper, as to the disposition of the merchandise. Under this change, the fee would be waived for all delivery certifications if the request is made at the time the entry documents are filed. If the request for certification is made after the entry documents are filed, a fee of \$10.00 for each hour or fraction thereof for document searches would be charged in addition to a charge of 15 cents per page for photocopying. This amount must be paid prior to release of a certification. This new fee system will replace the current fee of 20 cents Customs now charges for all certifications regardless of when they are requested. This change will permit Customs to maintain its present service of providing official certificates for the trade community at a fee commensurate with the actual cost of the service rendered.

**EFFECTIVE DATE:** November 29, 1985.

**FOR FURTHER INFORMATION CONTACT:** Herb Geller, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-4161).

## SUPPLEMENTARY INFORMATION:

## BACKGROUND

As a service to the trade community, Customs routinely issues official certificates such as certificates of landing and disposition of merchandise arriving in the U.S. from a foreign country. This particular certificate, which is often referred to as a "delivery verification," is Customs official acknowledgement that certain merchandise was landed in the U.S. and provides information to the requesting party, usually the shipper, as to disposition of the merchandise. Unless otherwise prescribed by law, a fee of 20 cents is charged for each certificate issued, as required by § 24.12(a)(2), Customs Regulations (19 CFR 24.12(a)(2)). Notwithstanding inflation, this 20 cent fee has been collected by Customs for this service since at least the 1930's. This charge does not concern certification of navigation fees relating to vessel services which are provided for in § 4.98(a), Customs Regulations (19 CFR 4.98(a)).

By Circular ENT-1-EV, dated December 14, 1965, Customs personnel were advised of two methods of verifying the landing and disposition of importer merchandise. Verification may be accomplished on Customs Form 3227, "Certificates of Disposition of Imported Merchandise", or on an annotated copy of the inward foreign air or vessel manifest, prepared by the requester. Also, verification may be made on Department of Commerce Form 647P, "Delivery Verification Certificate."

In June 1982, Customs Headquarters surveyed the Customs regions to determine the volume and cost of processing "delivery verification" requests. The survey revealed that nationwide there are approximately 21,500 such requests processed annually. Estimates of cost varied widely depending upon the extent and degree of difficulty of the research performed in locating the information requested. For example, at one port the verification procedure takes two forms: (1) Verification requests on Customs Form 3227 received at the time of entry, in which case immediate verification of landing and disposition is made at little or no cost; and (2) requests received after entry, which require a Customs employee to locate the entry and verify the information at a substantially higher cost.

Some Customs ports were in favor of eliminating the delivery verification procedures entirely citing budgetary and personnel restraints. Some ports wished to retain the current procedures but increase the fee to an amount commensurate with the cost of the service performed. Other ports wished to eliminate the current procedures and adopt less costly methods of verification.

While the issuance of delivery verification certificates is clearly not an essential Customs function or requirement, Customs believes that it provides a valuable service to the trade community and therefore should be retained. If this service were to be discontinued, as suggested by some ports, there would be no practical means for the shipper to determine the date of landing and disposition of the merchandise. For example, the information may be re-

quired to satisfy the exporter's bond, obtain drawback from a foreign government, resolve disputes with the carrier over loss or damage to the merchandise or merely be required by a foreign government for statistical or other purposes.

After a thorough review of this matter, Customs was of the opinion that the present service of providing official certificates for the trade community should be continued. Accordingly, in a notice published in the Federal Register on June 23, 1983 (48 FR 28671), Customs proposed to amend § 24.12(a)(2), by increasing the certification fee from 20 cents to \$4.00 which, at that time, was the average cost to Customs for processing all requests.

#### DISCUSSION OF COMMENTS

Four comments were received in response to the notice. Three commenters suggested a dual fee system whereby certifications made at the time the entry documents are filed would have a lower fee than certifications made after goods have been cleared and entry documents filed. This suggestion was based on the fact that a certification made at the time of entry requires only a cursory review of the documents and a signature or stamp attesting to the disposition of the merchandise, whereas a certification made after filing requires document retrieval and research.

After consideration of these comments and further review of the matter, it was determined that the original proposal was not cost-effective as the expenses that Customs would incur in collecting the fees would be more than the fees themselves. Accordingly, by a notice published in the Federal Register on May 24, 1985 (50 FR 21455), Customs proposed a new fee schedule whereby the fee would be waived for delivery certifications requested at the time entry documents are filed. At this time, it is not cost-effective for Customs to collect a minimal certification fee. However, for certifications requested after the entry documents are filed, a fee of \$10.00 for each hour or fraction thereof for time spent by each clerical, professional or supervisor in finding the documents will be charged, plus a charge of 15 cents per page for photocopying. Customs believes these charges are analogous to those found in § 1.6, Treasury Department Regulations (31 CFR 1.6), for finding records and information requested pursuant to the Freedom of Information Act (5 U.S.C. 552). These certification fees may also be charged pursuant to the User Charges Statute (31 U.S.C. 9701) which states that the head of each agency may prescribe regulations establishing the charge for any services provided by the agency based on the fair and actual costs to the Government. These fees, which must be paid prior to release of a certification, will be applied to all certifications requested after the entry documents are filed and will not be limited to those accomplished only on Customs Form 3227 and Commerce Form 647P.

Of the two comments received in response to the second notice, one was opposed. The opposing commenter suggested that when a copy of Customs Form (CF) 7501 is furnished to Customs with a request for delivery verification (after the entry summary was originally filed), it would not require retrieval and research and a \$10.00 fee would not be realistic. The commenter also stated that not all districts are validating the customs broker copy as mandated by Manual Supplement 4400-11, dated April 20, 1983.

Customs cannot adopt the suggestion that official certifications should be provided without charge after filing of an entry summary if such request is accompanied by a copy of the CF 7501. Whether or not such a request is accompanied by a copy of a CF 7501, additional time and expenditure of manpower will occur when a request is made following entry summary filing. A verification at the time of entry summary filing is a routine matter in that all documentation is present to quickly determine the disposition of an entire shipment. With only a copy of a CF 7501, queries may be required and possibly retrieval of documents to assure the accuracy of an official Customs certification. Concerning the comment on validating a CF 7501, this is outside the purview of the proposal. However, Manual Supplement 4400-11, does not "mandate" validating CF 7501 copies. The Supplement states that to the extent *possible and necessary*, procedures will be established to date stamp entry summaries or provide a receipt for the summary filed. This is accomplished primarily to establish timely filing of entry summaries. Also, with Customs Automated Commercial System and Automated Broker Interface, individual validations are being phased out and replaced by system produced receipts for batch filed entry summaries.

Accordingly, after consideration of the comments received in response to the second notice, and further review of the matter, Customs has determined to adopt the proposed fee schedule.

#### CERTIFICATION FEE SCHEDULE

1. No fee will be charged for furnishing an official certificate if the request is made to Customs at the time the entry summary is filed.
2. A fee of \$10.00 for each hour or fraction thereof for time spent by each clerical, professional or supervisor in finding the documents will be charged for furnishing an official certificate if the request is made to Customs after the entry summary is filed, plus a charge of 15 cents per page for photocopying. The fee must be paid before release of a certification.

These fees will remain in effect until changed by publication of a general notice in the Federal Register and the CUSTOMS BULLETIN, as provided for in § 24.12(a)(2), Customs Regulations.



## EXECUTIVE ORDER 12291

Because this document will not result in a regulation which would be a "major rule" as defined by § 1(b) of E.O. 12291, a regulatory impact analysis and review is not required.

## REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that this amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

## DRAFTING INFORMATION

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

## LIST OF SUBJECTS IN 19 CFR PART 24

Customs duties, Collections, Certification fees, and Imports.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING  
PROCEDURE

1. The general authority citation for Part 24 continues to read as follows:

**AUTHORITY:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624; 31 U.S.C. 9701;

Section 24.12 also issued under 19 U.S.C. 1524; 46 U.S.C. 927.

2. Section 24.12(a)(2), Customs Regulations (19 CFR 24.12(a)(2)), is revised to read as follows:

**§ 24.12 Customs fees; charges for storage.**

(a) \* \* \*

(2) No fee will be charged for furnishing an official certificate if the request is made to Customs at the time the entry summary is filed. However, Customs shall charge and collect a fee of \$10.00 for each hour or fraction thereof for time spent by each clerical, professional or supervisor in finding the documents and furnishing an official certification if the request is made after the entry documents are filed, plus a charge of 15 cents per page for photocopying. The fee may be revised periodically by publication of a general notice in the Federal Register and CUSTOMS BULLETIN setting forth the revised fee. The published revised fee shall remain in effect until changed.

ALFRED R. DE ANGELUS,  
*Acting Commissioner of Customs.*

Approved: October 7, 1985.

**DAVID D. QUEEN,**  
*Acting Assistant Secretary of the Treasury.*

[Published in the Federal Register, October 30, 1985 (50 FR 45104)]

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(T.D. 85-182)

**Bonds**

**Approval To Use Authorized Facsimile Signatures and Seals; T.D.  
79-241 Amended**

The use of facsimile signatures and facsimile seals on Customs bonds by the following corporate surety has been approved effective October 24, 1985 (218338).

The corporate surety has provided the Customs Service with a copy of the signature to be used, a copy of the corporate seal, and a certified copy of the corporate resolution agreeing to be bound by the facsimile signatures and seals. This approval is without prejudice to the surety's right to affix signatures and seals manually.

**International Business and Mercantile  
REassurance Company  
Chicago, Illinois**

**Authorized facsimile signature on file for:**

**A.C. Zucaro, President**

(BON-3-08)

**Dated: October 24, 1985.**

**GEORGE C. STEWART**  
**(For Edward B. Gable, Jr., Director,**  
**Carriers, Drawback and Bonds Division).**



# U.S. Court of Appeals for the Federal Circuit

(Appeal No. 85-2067)

**STRIDE RITE CORP., APPELLANT v. UNITED STATES, APPELLEE**

*William E. Melahn*, Doherty and Melahn, of Boston, Massachusetts, argued for appellant.

*Jerry P. Wiskin*, Commercial Litigation Branch, Department of Justice, of New York, New York, argued for appellee. With him on the brief were *Richard K. Wilard*, Acting Assistant Attorney General, *David M. Cohen*, Director and *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office.

Appealed from: United States Court of International Trade.

*Judge RESTANI.*

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(Appeal No. 85-2067)

**STRIDE RITE CORP., APPELLANT v. UNITED STATES, APPELLEE**

(Decided October 25, 1985)

Before *FRIEDMAN*, *Circuit Judge*, *MILLER*, *Senior Circuit Judge*, and *NEWMAN*, *Circuit Judge*.

*MILLER*, *Senior Circuit Judge*.

On the basis of its opinion (reported at 605 F. Supp. 279 (1985)), we affirm the decision of the United States Court of International Trade approving the Customs Service's appraisalment (using American Selling Price valuation) of Stride Rite's "Flyer" footwear.

**AFFIRMED**

# The Court of Appeals for the Federal Circuit

Report of the

Committee on the Federal Circuit  
to the Senate of the United States  
in 1892

Printed by the Government Printing Office  
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1892

# United States Court of International Trade

One Federal Plaza

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Dominick L. DiCarlo

Thomas J. Aquilino, Jr.

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# Decisions of the United States Court of International Trade

(Slip Op. 85-108)

SAN FRANCISCO NEWSPAPER PRINTING CO., PLAINTIFF V. UNITED STATES, DEFENDANT

Court No. 83-9-01374

Before DiCARLO, Judge.

Defendant moves to sever and dismiss a part of the action on the grounds that the action was commenced later than 180 days after notice of denial of a protest was mailed. Plaintiff contends that the denial of the protest was rescinded and that defendant is estopped from asserting a timeliness defense.

Held: Customs is not authorized to rescind a denial of a protest. Estoppel is not available where a time limitation is a jurisdictional prerequisite.

[Defendant's motion to sever and dismiss is granted.]

(Decided October 18, 1985)

George R. Tuttle, P.C. (Stephen S. Spraitzer), for plaintiff.

Richard K. Willard, Assistant Attorney General; Joseph I. Liebman, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (Kenneth N. Wolf), for defendant.

## MEMORANDUM OPINION AND ORDER

DiCARLO, Judge: Defendant moves to sever and dismiss a part of this action for lack of jurisdiction. Considering the relevant facts in the light most favorable to plaintiff,<sup>1</sup> the Court grants the motion.

Plaintiff entered merchandise invoiced as "standard letterpress printing" paper from Finland, on April 19, 1979 (first entry) and May 14, 1979 (second entry).

On April 10, 1980, plaintiff filed a protest (April protest) against the classification of the second entry, and requested that the protest be forwarded to the Regional Office of the United States Cus-

<sup>1</sup>On a motion under Rule 12(b)(1) of the Rules of this Court, where a jurisdictional defect is not apparent on the face of the complaint, the Court may dismiss on the basis of the complaint, supplemented by undisputed facts in the record, plus the Court's resolution of disputed facts. See *Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir. 1981). The Court makes no factual findings on this motion, since the jurisdictional question may be resolved on the basis of plaintiff's factual allegations.

toms Service (Customs) for further review and disposition. On April 30, 1980, the protest was denied without further review.

On May 1, 1980, plaintiff filed a protest (May protest) which contested the classification of the first entry and requested further review.

On September 8, 1980, plaintiff petitioned Customs pursuant to 19 U.S.C. § 1520(c) (1982), to rescind the denial of the April protest and suspend any further action on it pending final review of the May protest. Customs did not respond in writing to the petition.

Plaintiff's attorney states in an affidavit that: (1) he discussed the petition with a Customs official who said that the denial of the April protest could be rescinded; (2) the Customs official rescinded the denial on or before October 6, 1980; and (3) counsel for plaintiff did not file a summons within 180 days of April 30, 1980 because it relied on Customs' rescission of the denial of the April protest.

On March 30, 1983, Customs denied the May protest and determined that the April protest should have been denied only in part. Plaintiff brought this action on September 23, 1983, contesting the denial of both protests pursuant to section 515 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1515 (1982). Jurisdiction is asserted under 28 U.S.C. § 1581(a) (1982).

Defendant now moves to sever the part of the action which contests the denial of the April protest, and dismiss it for lack of jurisdiction on the grounds that it is untimely.

The timeliness of this action is governed by 28 U.S.C. § 2636(a)(1) (1982), which states:

(a) A civil action contesting the denial, in whole or in part, of a protest under section 515 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade—

(1) within one hundred and eighty days after the date of mailing of notice of denial of a protest under section 515(a) of such Act \* \* \*.

The act which triggers the running of the 180-day period prescribed by section 2636, the mailing of the denial, occurred on April 30, 1980. Plaintiff contends, however, that the denial was rescinded, and that the time for filing an action did not begin to run until March 30, 1983. The question presented is whether Customs may rescind the denial of a protest after it has been mailed.

Plaintiff argues that rescission is authorized by 19 U.S.C. § 1515(a) (1982), which allows Customs two years in which to review and approve or deny a protest in whole or in part. Because the alleged rescission occurred within two years of the filing of the April protest, and section 1515(a) does not specifically prohibit Customs from modifying or rescinding a decision on a protest within the two-year period, plaintiff contends the rescission was proper.

"It is, of course, fundamental that timely filing of a summons is a jurisdictional condition for bringing a civil action in this court,



and such a condition must be strictly observed." *Texas Mex Brick & Import Co. v. United States*, 72 Cust. Ct. 291, 292, 371 F. Supp. 579, 581 (1974) (footnote omitted); see *F. W. Myers & Co. v. United States*, 6 CIT —, Slip Op. 83-132 (Dec. 16, 1983). Although section 1515 limits to two years the time in which Customs must grant or deny a protest, it does not authorize Customs to exercise jurisdiction over a protest after it has been denied. Once Customs mailed the denial of the April protest, plaintiff had but two courses it could pursue: to abandon the protest, or to bring an action in this Court. See *Raphael Weill & Co. v. United States*, 21 CCPA 152, 157, T.D. 46479 (1983).

Plaintiff also argues that rescission of the denial of a protest is authorized by 19 U.S.C. § 1520(c) (1982). Under that section, Customs may be petitioned to "reliquidate an entry to correct—(1) a clerical error, mistake of fact, or other inadvertence \* \* \* adverse to the importer and manifest from the record \* \* \* in any entry, liquidation, or other customs transaction \* \* \*." *Id.* Plaintiff argues that Customs' failure to grant further review of the April protest is an inadvertence correctable by the section 1520(c) petition.

Section 1520(c) authorizes Customs to "reliquidate an entry" under the circumstances set forth therein. Plaintiff did not seek to have an entry reliquidated by its petition. The rescission of a denial of a protest is neither contemplated nor authorized by section 1520(c). Customs' action could not extend the time for filing an action in this Court, since Customs is powerless to expand the Court's jurisdiction. See *Audiovox Corp. v. United States*, 8 CIT—, 598 F. Supp. 387, 389-90 (1984), *aff'd*, 764 F.2d 848 (Fed. Cir. 1985).

Finally, plaintiff contends that defendant is estopped from raising the timeliness defense because the purported rescission was carried out by Customs officials and relied upon by plaintiff.

Estoppel is inapplicable in this case. A time limitation that is a jurisdictional prerequisite is not subject to waiver or estoppel. See *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 392-93 (1982); *Sims v. Heckler*, 725 F.2d 1143, 1145 (7th Cir. 1984); *United States v. Reliable Chemical Co.*, 66 CCPA 123, 128, 605 F.2d 1179, 1184 (1979).

Plaintiff's action contesting Customs' denial of the April protest was not timely commenced and the Court is without jurisdiction to consider that claim.

It is hereby ordered that defendant's motion to sever and dismiss is granted.

(Slip Op. 85-109)

ARMSTRONG RUBBER CO., ET AL., PLAINTIFFS, v. UNITED STATES, ET AL., DEFENDANTS

Court No. 84-10-01444

Before WATSON, Judge.

MEMORANDUM OPINION AND ORDER

[Defendants' motion for stay of judgment pending appeal denied.]

(Decided October 18, 1985)

Lynn M. Schlitt, General Counsel; Michael P. Mabile, Assistant General Counsel and Brenda A. Jacobs, for defendant U.S. International Trade Commission.

Frederic L. Ikenon, P.C. (Frederick L. Ikenon of counsel) for plaintiffs.

Arnold and Porter (Robert E. Herzstein, Thomas B. Wilner and Alan O. Sykes) for defendant-intervenors Hankook Tire Manufacturing Co., et al.

WATSON, Judge: This motion for a stay pending appeal raises the same issues as were recently discussed in *American Grape Growers Alliance v. United States*, 9 CIT —, Slip Op. 85-104 (Oct. 7, 1985).

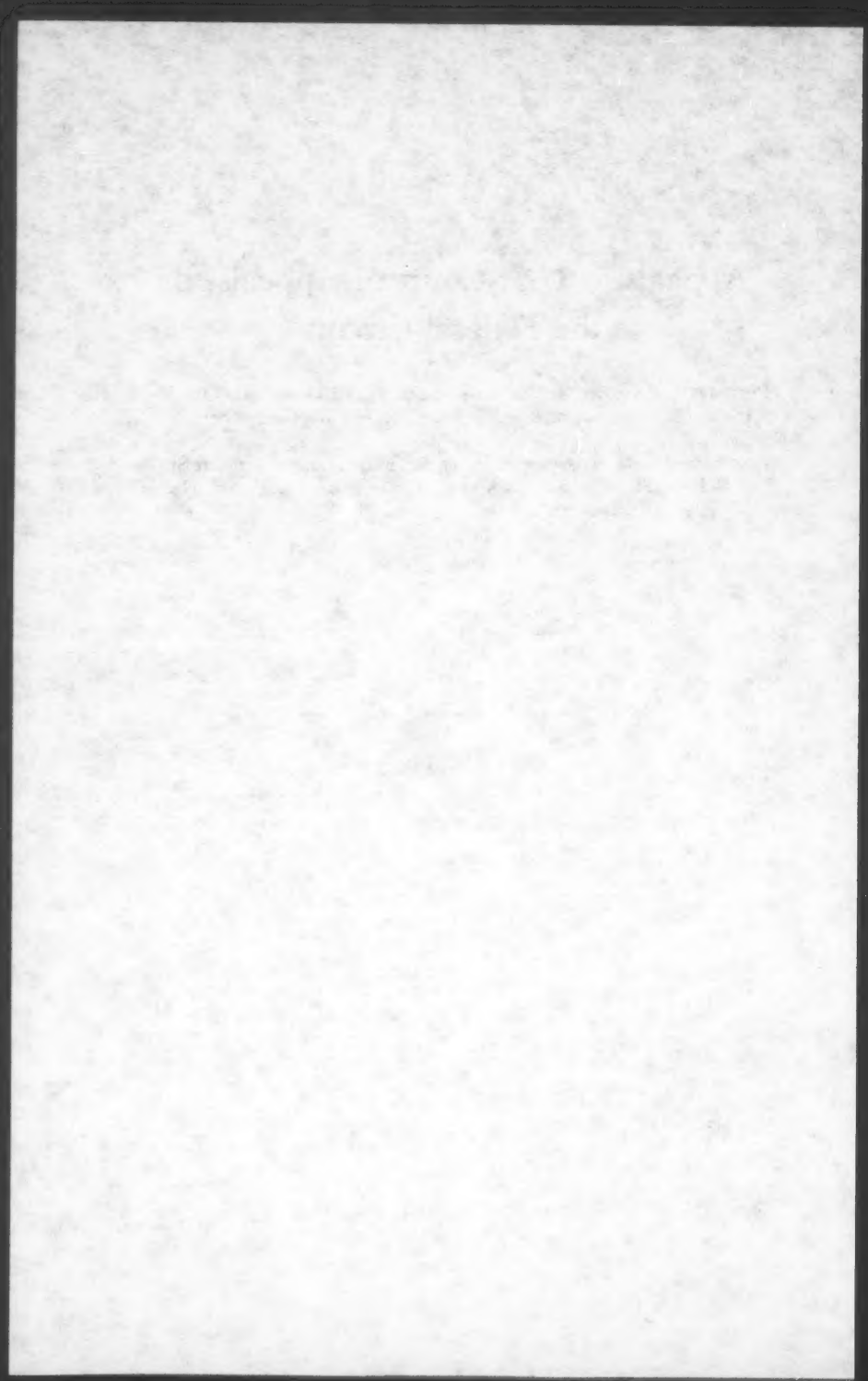
Here too, the Court finds that there is a fair possibility of damage to plaintiffs from the granting of a stay, in terms of the continued deprivation of an administrative investigation into their alleged injury. There is no comparable harm to anyone else, and a strong public interest in the uninterrupted progress of these investigations.

For these reasons, the motion for a stay is denied.

## Appeals to U.S. Court of Appeals for the Federal Circuit

**Permagrin Products, Inc. v. United States**, 9 CIT —, Slip Op. 85-91 (Sept. 4, 1985), *appeal docketed*, No. 86-555 (Fed. Cir. Oct. 7, 1985).

**American Grape Growers Alliance for Fair Trade v. United States**, 9 CIT —, Slip Op. 85-84 (Aug. 8, 1985), *appeal docketed*, No. 86-556 (Fed. Cir. Oct. 11, 1985).



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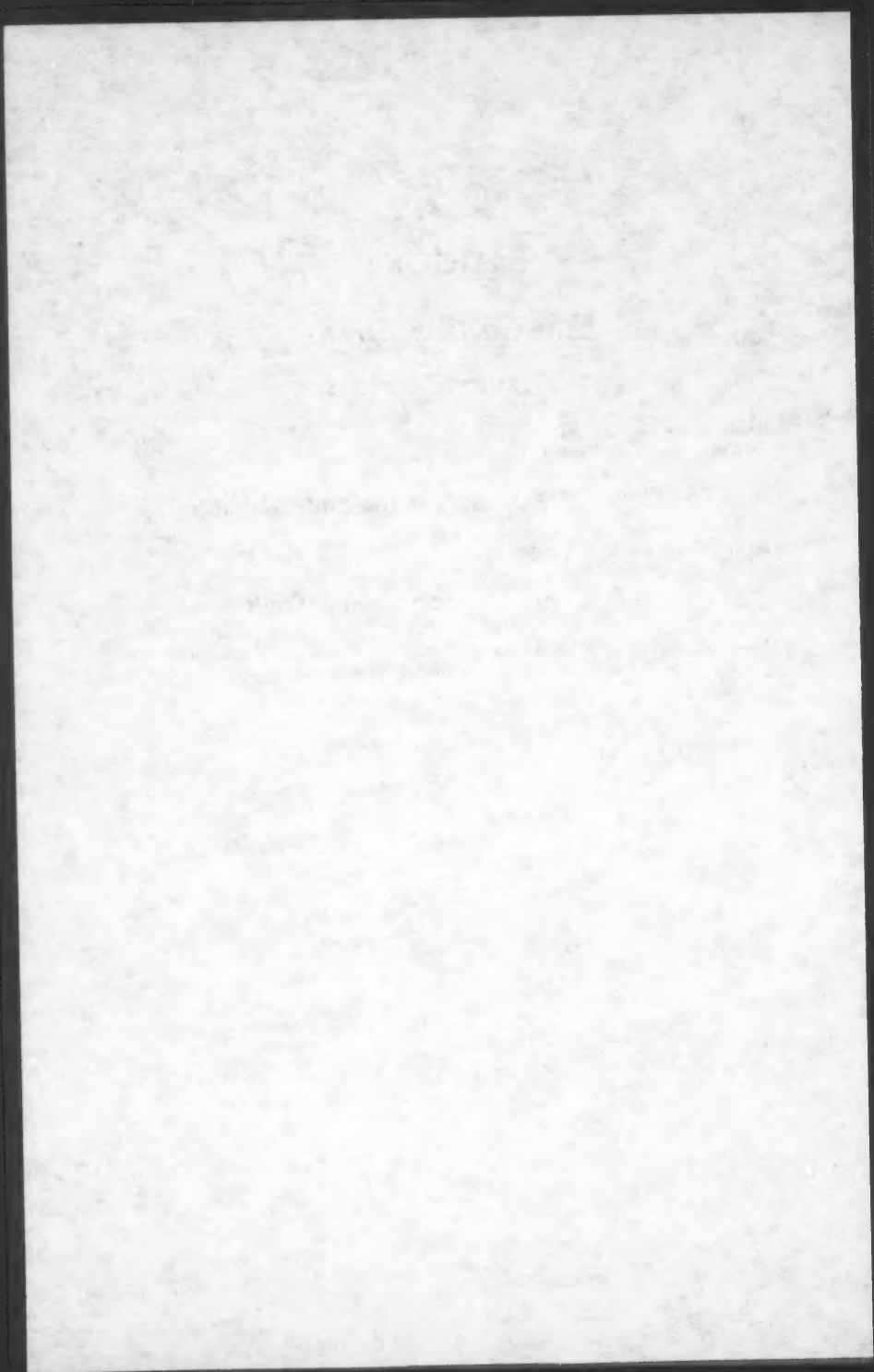
|  | T.D. No. |
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### U.S. Court of Appeals for the Federal Circuit

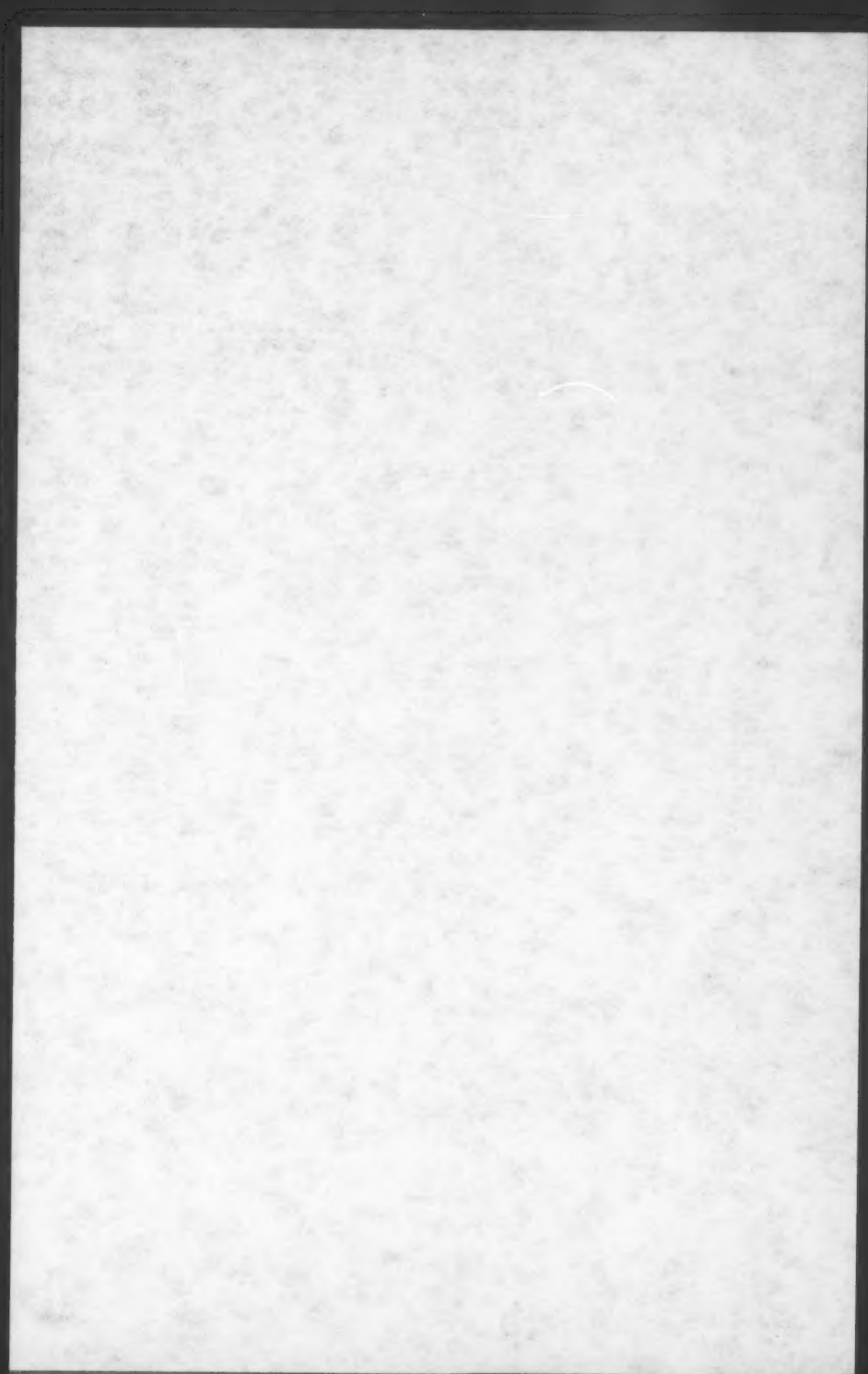
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|--|------------|
| Stride Rite Corp. v. United States ..... | 85-2067    |

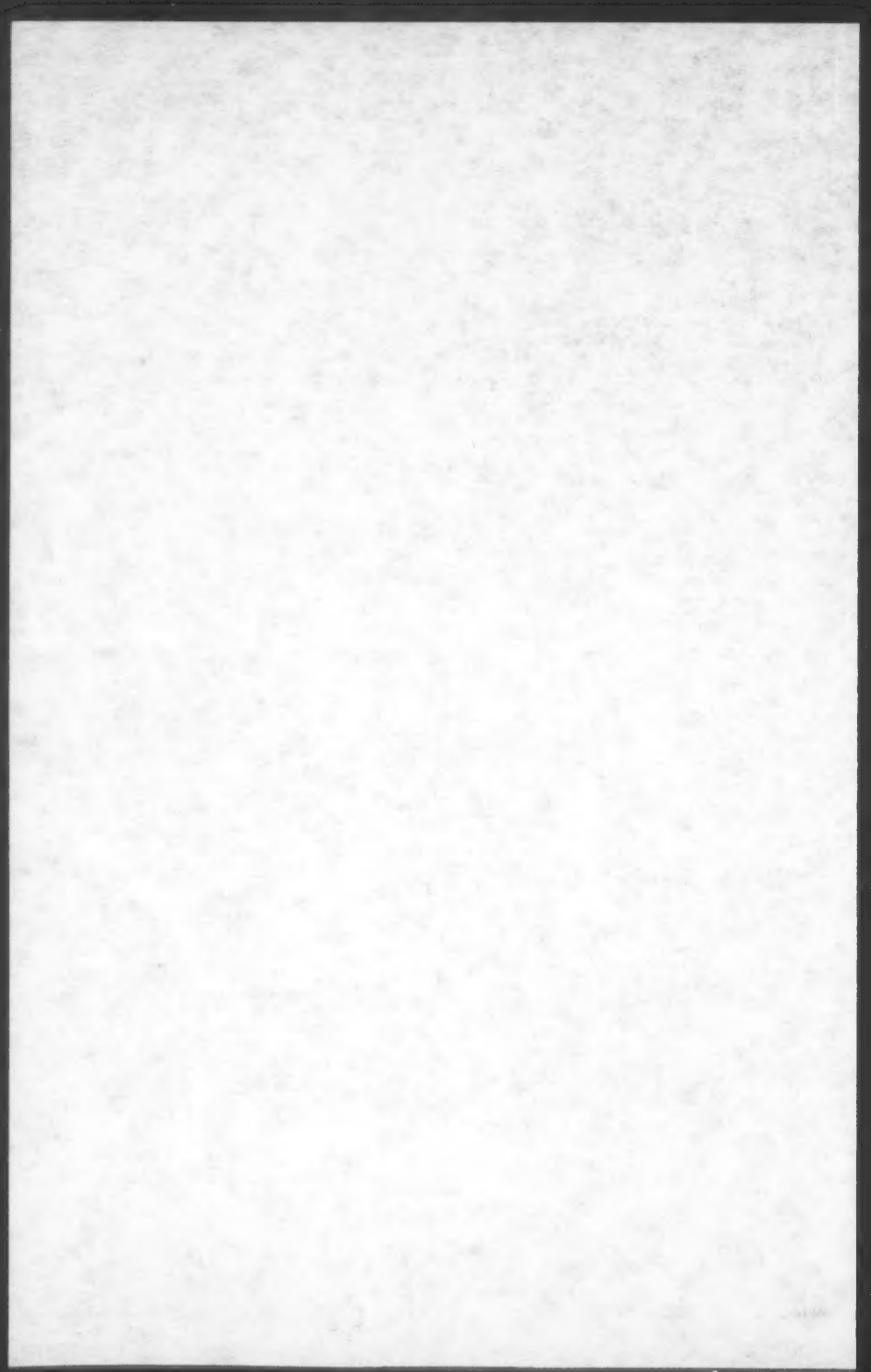
### U.S. Court of International Trade

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|---|--------------|
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